IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3546 OF 2003

IN

SUIT NO.4002 OF 2003

Jose Padinjakkara Antony. ... Plaintiff.

vs.

M/s.Kalpataru Enterprises & others. .... Defendants.

Mr.H.V.Gala i/b. H.V.Gala & Co. for Plaintiff.

Mr.A.A.Kumbhkoni i/b. L.M.Acharya, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 15th September,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff seeking interim relief of temporary injunction and also appointment of Receiver. The suit of the plaintiff is for decree of specific performance of two agreements. One Agreement is dated 3.7.1999 in relation to Shop no.G-1 in a building. The agreed consideration as per the agreement is Rs.24 lakhs. On the date of agreement the entire consideration is shown to have been paid by the plaintiff. The date of

delivery of possession is shown as 30.6.2001. The Second agreement is also dated 3.7.1999. It is in relation to the Shop no.F-1. Here the agreed consideration is Rs.12 lakhs and the entire consideration is shown to have been paid. Here also the date for delivery of possession is 30.6.2001. Admittedly, by the date 30.6.2001 the possession was not handed over by the defendants to the plaintiff. Admittedly, there is not even a letter written by the plaintiff who claims to have paid full consideration to the defendants, reminding the defendants of alleged obligation of delivery of possession of two shops to the plaintiff. One more thing which is pertinent to note here is that though the huge amounts of Rs.24 lakhs and Rs.12 lakhs was alleged to have been paid, according to the plaintiff that amount was paid in cash. The defence of the defendants is that the defendants had given two blank agreements duly signed by the defendant no.2 to the erstwhile partner of the defendant no.1-firm as a collateral security. According to the defendants, those signed agreements which were given in blank as security are being misused by the plaintiff. I find that there is substance in the defence put up by the defendants in view of the strange conduct of the plaintiff of allegedly paying Rs.36 lakhs by cash and even after paying the full consideration and even though the possession was not handed over on the agreed date i.e. 30.6.2001, not addressing even a single letter to the defendants, not even a letter demanding possession or interest on the amount from the defendants.

In the plaint, there is no explanation given of whatsoever nature as to why the plaintiff did not take any action against the defendants from July,2001 till November,2003 though the defendants were taking no steps to hand over the possession of the shops to the plaintiff. I find that the case put up by the plaintiff cannot be prima facie believed. The plaintiff therefore, does not have prima facie case and therefore, the plaintiff is not entitled to any interim injunction. Hence, the notice of motion is disposed of. Ad-interim order stands vacated.

2. At this stage, a request is made that operation of the ad-interim order be continued. As I found that the plaintiff has come to this court with unbelievable case, in my opinion, it will not be appropriate to continue the ad-interim order. Hence, the request is rejected.

C.C. be expedited.